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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,499	06/24/2003	Scott D'Avanzo	5611.00007	3208
29747	7590	11/30/2006	EXAMINER	
GREENBERG TRAURIG 3773 HOWARD HUGHES PARKWAY SUITE 500 NORTH LAS VEGAS, NV 89109				RENDON, CHRISTIAN E
			ART UNIT	PAPER NUMBER
			3714	

DATE MAILED: 11/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/603,499	D'AVANZO, SCOTT	
	Examiner Christian E. Rendón	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 29 August 2005.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 7-16 and 21-33 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 7-16 and 21-33 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 24 June 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____

***Response to Amendment***

1. This office action is in response to the amendment filed on August 29, 2005 in which applicant amends claims 7, 16, 21, 27-30 and 32, cancels claims 1-6 and 17-20, adds a new claim 33, and responds to claim rejections. Claims 7-16 and 21-33 are pending.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

2. Claims 7-16 and 21-33, are rejected under 35 U.S.C. 103(a) as being unpatentable over Seelig et al (US 6,338,678) in view of Travis et al (US 5,380,007).

Regarding claims 7-8, 21, and 23, Seelig teaches an electronic gaming machine comprising:

- a primary game with multiple gaming indicia (Col 3:64-4:7);
- a bonus game associated in communication with a primary game, displaying a

container containing multiple indicators having a value or symbol depicted thereon, said multiple indicators being circulated until one or more indicators is selected(Col 5:54-6:5 & 2:8-2:10); and  
wherein said values or symbols depicted on the selected indicators defines a bonus game reward(Col 6:19-26 7 & Figure 11).

Seelig is silent regarding the use of a video embodiment of the secondary selection game however Travis et al teaches such an embodiment for a ball selection game (Col 1:54-2:2). It would have been obvious to one of ordinary skill in the art at the time of invention to have utilized the video display of Travis in the invention of Seelig in order to avoid sound issues associated with an air compressor as well as to allow the use of one set of virtual indicators in place of two sets of actual indicators thereby reducing the manufacturing costing.

The invention of Seelig/Travis however is silent regarding the embodiments of the mixing container and balls as a blender and ice cubes respectively, however as no stated problem has been solved nor unexpected result obtained through the claimed embodiments these alterations are held to be a matter of design choice. It would have been obvious to one of ordinary skill in the art at the time of invention to have embodied the indicators and vessel as ice cubes and a blender in order to encompass a desired game theme.

Regarding at least claims 9, and 24, Seelig teaches the inclusion of speakers (Col 7:56-60).

Regarding at least claim 10, Seelig teaches the values or symbols depicted on the one or more simulated indicators are bonus awards or multipliers (Col 6:24-26).

Regarding at least claims 18, and 30, Seelig teaches the automatic activation of a secondary or bonus game in response to one or more pre-established outcomes (Col 5:11-13 & Col 5:58-6:3).

Regarding at least claims 16, and 32 Seelig teaches the association of a jackpot with the secondary game comprising indicators escaping in a predetermined order (Col 10:35-40).

Regarding at least claims 11, and 22, Seelig teaches the circulation of award indicators with an air supply in communication with the device (Col 5:54-57).

Regarding at least claims 12, 25, and 26, Seelig teaches the isolation of award indicators in ball holders which is equated to the claimed blender lid in view of the modification presented in the rejection of at least claim 12 above (Col 8:32-40).

Regarding at least claims 13, and 27, Seelig teaches the use of gravity feeds (Col 8:32-40), but is silent regarding the use of vacuum tubes. It would have been obvious to one of ordinary skill in the art to have utilized vacuum tubes in place of the gravity feeds of Seelig/Travis in order to allow for Indicator arrangements in opposition to gravity.

Regarding at least claims 14, 15, 28, and 29, Seelig teaches a "lever" system for isolating award indicators (Element 66), controlled by the gaming machine (Element 76).

Regarding at least claims 19 and 31, Seelig teaches player means to activate the indicator agitation (Col 5:46-59).

Claim 33 is rejected under 35 U.S.C 103(a) as being unpatentable over Seelig (US 6,338,678). Regarding claim 33, Seelig teaches an electronic gaming machine comprising:

- A primary game with multiple gaming indicia (Col 3:64-4:7);
- A bonus game associated in communication with a primary game, displaying a container containing multiple indicators having a value of symbol depicted thereon, said multiple indicators being circulated until one or more indicators is selected (Col 5:54-6:5 & 2:8-2:10)
- Automatic activation of a secondary or bonus game in response to one or more pre-established outcomes (Col 5:11-13 & Col 5:58-6:3)
- Circulation of award indicators with an air supply in communication with the device (Col 5:54-57)
- Isolation of award indicators in ball holders which is equated to the claimed blender lid in view of the modification presented in the rejection of at least claim 12 above (Col 8:32-40)

The invention of Seelig however conceals the award container instead of allowing the player to observe the beginning of the award process and since no stated problem has been solved nor unexpected result obtained through the claimed embodiments these alterations is held to be a matter of design choice. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention

was made, to display the award container in order to give the illusion that the chances of getting a bonus are “random” and not pre-determined even though the applicant’s invention does so.

***Response to Arguments***

3. Applicant's arguments see page 9, filed on November 8, 2005, with respect to rejections to claims 7-16 and 21-33 under U.S.C 103 have been fully considered but they are not persuasive. Applicant argues that Seelig does not disclose an award container and multiple levers as observable to a player during the entire award process (Remarks: par 3, line 11) since both objects are concealed from view (Remarks: par 5 line 1). The visibility of the award container is viewed as an obvious design choice to a person of ordinary skill in the art since the functionality of both designs remains the same. If the award container is concealed or not, an award indicia is still separated from the set of indices into a cylindrical display to exhibit a player’s award. As for the levers, they are only visible out of necessity since a lever prevents the award indicia from falling back into the set when it is separated into the cylindrical display that is positioned above the “blender”. Where as Seelig’s gate (Seelig: Figure 5A, 66) prevents the award indicia from falling into the cylindrical display prematurely (Seelig: Figure 2A, 30) and is concealed since the gates are a component of the concealed “ball holder”. Therefore, the applicant’s multiple levers and “blender” are still equivalent to Seelig’s gate and “ball holder” and the rejection of claims 7, 14, 15, 21, 28-29 and 33 still stands under 35 U.S.C. 103(a).

***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christian E. Rendón whose telephone number is 571-272-3117. The examiner can normally be reached on 9 - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan M. Thai can be reached on 571-272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Christian E Rendón  
Examiner  
Art Unit 3714

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TC3700